

REMARKS

By the above actions, the abstract and claim 1 have been amended and a new claim 19 added. Additionally, a certified copy of applicants' German priority application is being filed contemporaneously herewith under separate cover letter; acknowledgement of receipt of the priority document is requested. In view of these actions and the following remarks, reconsideration of this application is now requested.

The abstract has been amended above to remove language of the type deemed inappropriate for the abstract. Additionally, the abstract has been supplemented to reflect the invention as now defined by amended claim 1.

Claims 12 and 13 were rejected by the Examiner under 35 USC § 112 as failing to comply with the enablement requirement as well for being indefinite on substantially the same basis, i.e., the lack of an exactly defined amount for the "predefined" amount of the cold or heat storage medium. This rejection is traversed for the following reasons.

Firstly, it is pointed out that the Examiner is taking a hypertechnical and unrealistic approach to his assessment of the subject matter covered by claims 12 and 13. Clearly, one of ordinary skill in the art would recognize that there is no single predefined amount which governs all cases, the amount varying by the properties of the medium selected, the size of the container, the size of the carrier in the container and the amount of medium which will fully saturate the carrier, for example. Likewise, common sense will indicate that the amount to which the container can be overfilled is equally variable and is dictated more by wastage, processing time, etc., than it is by any consideration relating to filling of the container. The Examiner's comments concerning the rate of drying and exhausting are irrelevant in the context of the invention since, as described in paragraphs [0018] and [0019] the existence of predetermined amount having been filled is determined by weight, not the amount of medium supplied. That is, since the weight of the container and carrier prior to filling is known, and "[s]ince the sum of the weight of the carrier material and the weight of the cold or heat storage medium is a function of the degree of filling, the degree of filling can be exactly determined via weight measurement." No complicated measuring devices are required as asserted by the Examiner. Therefore, it is submitted that claims 12 and 13 are supported by

an enabling disclosure and there is nothing indefinite about them, so that withdrawal of the outstanding rejections under § 112 is in order and is requested.

Claims 1-4, 6, 7, 16, and 17 stand rejected under 35 U.S.C. § 102 as being anticipated by the disclosure of the Mitchell patent. However, the Mitchell reference relates to the vacuum packing of perishable food products and has no real relevance to the present invention. Unlike the present invention, there is no reason or intent for a quantity of heat or cold medium to be retained within Mitchell's package nor is there a reason or intent to saturate Mitchell's carrier with a quantity of heat or cold medium. Likewise, unlike the present invention which uses the creation of at least a partial vacuum as a filling aid, as noted by the Examiner, the evacuation of air that occurs in accordance with the Mitchell disclosure is produced by draining the water out of his container, i.e., the water is used to produce a vacuum in the container instead of a vacuum being used to fill the container with water. Thus, Mitchell's disclosure is inapposite to the claimed invention. Since all of these distinctions are clearly brought out by the claims as now presented, withdrawal of the § 102 rejection based upon the Mitchell patent is in order and is now requested.

Claims 1, 5, 7, and 9-18 have been rejected under 35 U.S.C. § 103 as being unpatentable over the disclosure of European Patent to Satzger (EP '399) when viewed in combination with the Williams patent while claim 8 has been rejected based on this combination of references when viewed further in light of the Vaugh patent. These rejections are also inappropriate for the following reasons.

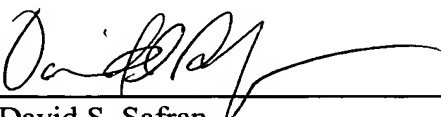
Firstly, the EP '399 European patent is the method described on page 1 of the present application as having the disadvantages associated with its requirement for the use of an autoclave that the invention seeks to overcome. As for the combination of the European and Williams references, it is noted that the Williams patent does not disclose how his pack is filled or even if it needs to be evacuated as part of the filling process, nor does he indicate anything suggestive of the use of an injection needle for filling purposes. Williams also does not disclose saturating of a carrier contained within his hot/cold pack. Thus, it is not seen how the combination of these references could lead to the present invention. Apparently the shortcomings of this proposed combination of references has been recognized by the Examiner and has led him to feel the need to make general statements as to well known

“vacuum snorkel packaging.” However, the Examiner has not identified any reference to support this position in any way, let alone in a context that is relevant to the EP ‘399 or the present invention. Furthermore, it is pointed out that the method of EP ‘399 involves use of an autoclave, and the Examiner has failed to explain how his unspecified vacuum snorkel packaging would be performed in such an environment. Still further, it is noted that the injection method of the Vaughn patent does not involve the use of a vacuum either. Thus, this rejection is inappropriate and should be withdrawn. However, should these rejections not be withdrawn, the Examiner should identify a relevant example of the use of “vacuum snorkel packaging” that he considers to be obvious to use so that such an assertion can be fully rebutted.

The prior art that has been cited, but not applied by the Examiner has been taken into consideration during formulation of this response. However, since this art was not considered by the Examiner to be of sufficient relevance to apply against any of the claims, no detailed comments thereon are believed to be warranted at this time.

While the present application is now believed to be in condition for allowance, should the Examiner find some issue to remain unresolved, or should any new issues arise, which could be eliminated through discussions with applicant’s representative, then the Examiner is invited to contact the undersigned by telephone in order that the further prosecution of this application can thereby be expedited.

Respectfully submitted,

By: 

David S. Safran
Registration No. 27,997

NIXON PEABODY LLP
Suite 900
401 9th Street, N.W.
Washington D.C. 20004
Telephone: (703) 827-8094
Date: October 29, 2004
NVA307806.1